

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

LANCE LAFLEVER FUGATE

Movant

v.

UNITED STATES OF AMERICA

Respondent

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Case No. 6:21cv444-JDK-JDL

(Crim. No. 6:20cr8-1)

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Movant Lance Fugate, proceeding *pro se*, filed the above-styled and numbered motion to vacate or correct sentence under 28 U.S.C. § 2255 challenging the validity of his convictions for possession with intent to distribute and distribution of methamphetamine and use, carrying, and possession of a firearm during and in furtherance of a drug trafficking crime. The case was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636.

Movant pleaded guilty to these charges and did not take a direct appeal. He contended in his § 2255 motion that his guilty plea was involuntary and made without understanding the nature of the charges and the consequences of the plea, his confession was coerced, and he received ineffective assistance of counsel. The Government filed an answer, to which Movant filed a reply.

After review of the pleadings and records, the Magistrate Judge recommended that the motion to vacate or correct sentence be denied. A copy of this Report was sent to Movant at his last known address, but no objections have been received. The Fifth Circuit has explained that where a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was actually received by the person to whom it was addressed. *Faciane v. Sun Life Assurance Company of Canada*, 931 F.3d 412, 420-21 and n.9 (5th Cir. 2019).


This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an

independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Movant did not file objections in the prescribed period. The Court therefore reviews the Magistrate Judge's findings or clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and Recommendation, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. The Court therefore adopts the Report and Recommendation of the United States Magistrate Judge as the findings of this Court.

Accordingly, it is hereby **ORDERED** that the Magistrate Judge's Report (Dkt. No. 17) be **ADOPTED**. The above-styled motion to vacate or correct sentence is **DISMISSED WITH PREJUDICE**. A certificate of appealability is **DENIED** sua sponte. All motions not previously ruled on are **DENIED**.

So **ORDERED** and **SIGNED** this **16th** day of **October, 2023**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE